FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2008 OF 2004
IN
FIRST APPEAL NO. 702 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

CORAM: A.S. OKA, J.
DATE : 17th August, 2004.

P.C.:-

1. Rule. Learned Counsel for Respondents waives service. Learned Counsel appearing for the Applicant relied upon a letter dated 3rd February, 1999 addressed by the Additional Municipal Commissioner of the Respondent no.1 Corporation to the General Secretary, Bombay Talkies Compound Association. In the said letter it is stated that the Respondent no.1 Corporation has framed guidelines providing for a fixed datum line for considering regularisation of unauthorised industrial units in Bombay Talkies Compound as on 3rd March, 1981.

It is stated in the said letter that the guidelines framed by Respondent no.1 are pending for approval of the State Government. The Learned Counsel for the Applicant submitted that if the guidelines are still awaiting the decision of the State Government, pending the said decision of the State Government, the suit structure cannot be demolished.

2. Learned Counsel appearing for Respondent nos. 2 to 5 submitted that the structure in dispute in the suit is clearly unauthorised and merely because the guidelines are pending before the State Government for approval, the structure cannot be protected.

3. The Respondent no.1 has filed Affidavit in reply to the civil Application. In the said Affidavit in reply it is not disputed that the guidelines are formulated by Respondent no.1 and are submitted to the State Government for approval. What is stated in the Affidavit in reply is that the State Government has not granted sanction to change the datum line from 1st April, 1962 to 3rd March, 1981.

Prima-facie it appears from the reply that it is not in dispute that offending structure is constructed prior to 3rd March, 1981.

4. If the guidelines formulated by Respondent no.1 are still pending before the State Government for decision, till such time the decision is not taken by the State Government, the structure subject matter of the suit will have to be protected. At this stage, Shri Damania learned Counsel appearing for Respondent Nos.2 to 5 pointed out that as a result of unauthorised extension made by the Applicant, the municipal taxes have been substantially increased and the Applicant is not paying the municipal taxes. If the structure subject matter of the suit is to be protected, the Applicant will have to pay all the municipal taxes payable in respect of the structure without prejudice to the rights and contentions of the parties. If the Applicant is claiming that his structure is unauthorised and is required to be protected because of the proposed datum line fixed by the Respondent no.1 Corporation, the Applicant is not

entitled to equitable relief unless he pays the entire municipal taxes payable in respect of Shed No. 143 A/B. Hence, I pass the followwing order.

ORDER

(i) The Respondent nos. 2 to 5 are directed to inform the Applicant or the Advocate for Applicant the total amount due and payable as of today in respect of the shed in question towards the property taxes payable to the Respondent no.1 Corporation. The Respondent no.2 to 5 will also forward relevant documents in support showing the amount of taxes payable.

(ii) The Applicant is directed to pay the amount due and payable on account of property taxes in respect of the shed to the Respondent Nos. 2 to 5 within a period of 3 months from the date of receipt of the communication from the Respondent nos. 2 to 5. The

said payment will be without prejudice to the rights and contentions of both the parties and subject to final result of the Appeal.

(iii) Till final disposal of the appeal, the Respondent no.1 shall not demolish the suit structure/shed subject to condition of the Applicant filing an undertaking in writing in this Court within a period of three weeks from today stating therein that the Applicant will not create any third party interests in respect of the suit structure, the Applicant will not part with the possession of the suit structure and the Applicant will not carry out any major additions and alterations to the suit structure without the permission of this Court. If the undertaking is not filed within the stipulated time, the interim relief granted will stand vacated.

(iv) In the event the Applicant

commits default in payment of municipal taxes as provided in this order, it will be open for Respondent no.2 to 5 to apply to this court for vacating the interim relief.

(v) It is made clear that this order is passed without prejudice to the right of the Respondent nos. 2 to 5 to file appropriate proceedings against the Applicants in appropriate Court.

. There will be no orders as to costs.

. All concerned to act on a copy of this order duly authenticated by the Office.

Sd/-

JUDGE